

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

V.

DARRELL NEELY,

Defendant.

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) Case No. 1:21-cr- 00642 (JDB)  
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**DEFENDANT’S MOTION TO COMPEL ACCESS TO NON-PUBLIC AREAS OF  
THE CAPITOL**

Defendant Darrell Neely, by and through undersigned counsel, requests that the government be compelled to allow his defense counsel and an investigator access to several non-public areas of the Capitol building in order to inspect, photograph and videotape these areas for preparation in his defense. These areas are not available to the public and have not been made available to counsel for photographs on the prior tours of the Capitol designed for defense counsel. Access to these areas is material to Mr. Neely's preparation of his defense against the charges in this matter. Pursuant to Rule 16 of the Federal Rules of Criminal Procedure, the Defendant has made a proper request to inspect and photograph the building, in this case the Capitol building, and now seeks the Court to compel access that has been improperly denied by the government. Rule 16(D), Fed. R. Crim Procedure.

In support of this motion the defendant asserts the following:

1. On August 8, 2022 the government was emailed a discovery letter by defense counsel specifically requesting the ability to inspect and photograph tangible objects and buildings or places that are within the possession, control or custody of the government pursuant to Fed. R. Crim. P 16(a)(1)(C). Ex. 1, Defense Discovery letter.

2. Undersigned defense counsel has attended two previous tours of the Capitol in preparation for this case and others and has made arrangements to attend another tour, a date to be set in late August, 2022. As part of these tours counsel was provided a list of public and non-public walkthrough locations. *See* Ex. 2 Defense Counsel Capitol Walkthrough Locations letter. On this list the Senate Wing Door is designated as non-public as are the connecting hallways.
3. Defense counsel have been told that if they attempt to deviate from the tour or take pictures in places designated as non-public, such as the Senate Wing Doors and Hallways connecting locations, they “will be asked to leave the tour and be banned from further tours.” *See* Ex. 3 Viewing Letter.
4. Being able to record and photograph these non-public areas is necessary for preparation for Mr. Neely’s defense at trial which is set for October 5, 2022. In particular, Mr. Neely is accused of wandering the halls of the Capitol building on January 6, 2021 and entering a decontamination staging area purportedly set up in the Crypt of the Capitol and/or the Capitol Visitor Center and taking items from that location, including an officer’s jacket.
5. The government alleges that an officer was in the process of decontamination when he removed his jacket with his name plate and hard badge. After finishing his decontamination, the officer was alerted to subjects entering the Senate floor and responded to the Senate Lobby left his items behind. *See* Exhibit 4, redacted 302 of Officer from 7-28-21.
6. Review of discovery, including CCV videos of the Crypt, has not revealed any areas in the Crypt that were used as a decontamination area for USCP on January 6, 2021. No videos of the Capitol Visitor Center have been turned over at all. Even the fisheye lens CCV, which purports to show almost the entire Crypt that day, (see figure 1 below), does not show a decontamination area or any officer clothing items on the floor. The location of this decontamination area is material to Mr. Neely’s defense in this case and the property

in question. He should be allowed access to it and shown it's exact location. If CCV video exists of it he should be given that video footage in discovery.



7.  
Figure 1

8. No body worn camera footage of any officers in this alleged decontamination area has been produced to the defendant. Presumably, if this was an area where officers were going for decontamination, it would include officers who wore body worn camera as well as the USCP who did not. Additionally, if other officers were there in the area, Mr. Neely has a right to know if any of them had body worn camera that would exculpate him from the alleged crimes of stealing officer clothing items.
9. Undersigned counsel has seen a decontamination area in an underground corridor at or near the West side of the Capitol on body worn camera in other cases. (See figure 2 below). This does not appear to be the Crypt area, or does it appear to be the Capitol Visitor Center. The officer claims he went to the decontamination area from the West front of the Capitol where he was sprayed multiple times with an unknown irritant. *Id.* It might be possible he used this underground area for decontamination. We just don't know. It is an area that appears to have been accessed only by law enforcement on January 6, 2021, for use in resting, recovery and decontamination. This area has not been made accessible on previous tours for defense counsel. Mr. Neely needs access to this area so that he may prepare for possible impeachment to the officer's claim that he left his items in a decontamination area accessible to Mr. Neely. It also goes to possible

impeachment evidence as to the officer's memory of the events of that day and where exactly he may have abandoned his jacket and other items.



10.  
Figure 2

11. The path traveled by Mr. Neely is also relevant to his defense and should be photographed and videotaped for his trial preparation. The areas most relevant to Mr. Neely's alleged movements through the hallways that day include the Senate Wing doors and the hallways directly to the side of that door, the hallways leading to the Crypt and the Capitol Visitor's Center, and the hall leading to the Memorial Doors where Neely is alleged to have exited. Photographing these hallway spaces has been previously prohibited during the tours set up for defense counsel.
12. Reliance at trial on CCTV video recordings or other open sourced videos of these non-public spaces is incomplete and prejudicial to the defendant because the videos do not show the relative distances traveled by the defendant and only small sections of his movements that day, sometimes from strange angles and for only moments at a time. The defendant should be able to inspect and photograph these areas in order to mount his defense and give an accurate depiction for the trier of fact of the relative location of doorways and exits in the building that day.
13. Mr. Neely requests this court to order the ability for undersigned counsel and their investigator to access the spaces specifically referenced in this motion. They include the Senate Wing Doors, the hallway adjacent to the doors that Mr. Neely is alleged to have traveled, the path from to the Crypt from that hallway and the decontamination area allegedly located in the Crypt and or Capitol Visitor Center, as well as the decontamination area that was in the lower level where officers were resting and decontaminating as pictured in Figure 2 above.
14. Additionally, Mr. Neely is alleged to have exited the Capitol through the Memorial Doors. The pathway Mr. Neely needed to take from the Crypt area to those doors is relevant to his

defense, including the amount of time he would have taken to reach that exit from the Crypt or CVC area, the exit's proximity to the alleged decontamination area, and if there was any opportunity on that journey to discard items in his possession either in the trash or otherwise.

WHEREFORE, Mr. Neely respectfully requests that the Court order the government to allow defense counsel to inspect certain areas of the Capitol to prepare a defense for the defendant.

Respectfully Submitted,

/s/  
Kira Anne West  
DC Bar No. 993523  
712 H. Street N.E., Unit 509  
Washington, D.C. 20002  
(202)-236-2042  
[kiraannewest@gmail.com](mailto:kiraannewest@gmail.com)  
Attorney for Mr. Darrell Neely

Certificate of Service

I certify that a copy of the forgoing was filed electronically for all parties of record on this 8th day of August, 2022.

/s/  
Kira Anne West  
Attorney for Mr. Darrell Neely